

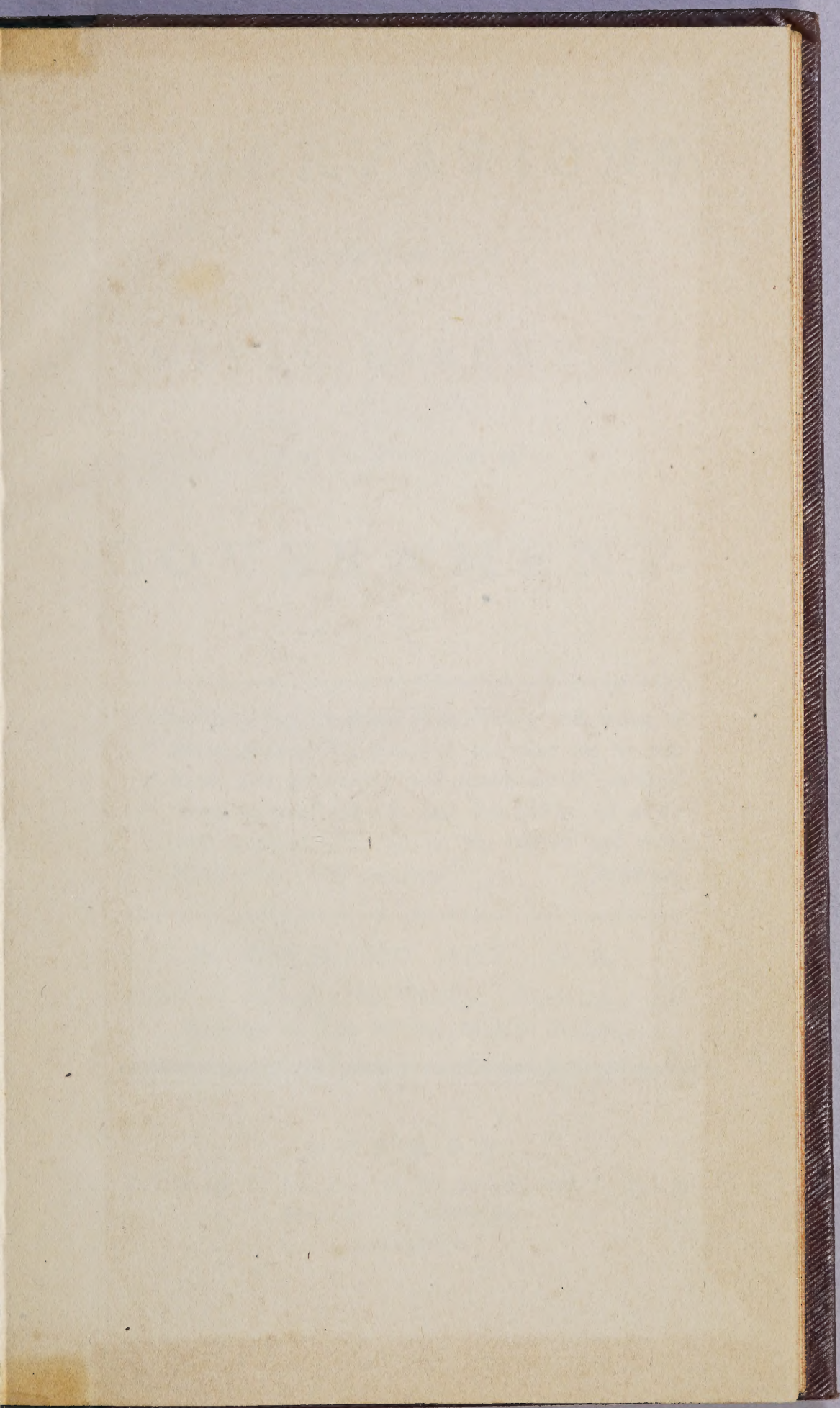


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John Carter Brown.



76:

OBSERVATIONS

On the Nature of

CIVIL LIBERTY,

And the Principles of

GOVERNMENT.

“ I reverence truth as much as any body ; and when it
 “ has slipped us, if a man will but take me by the
 “ hand, and go quietly and search for it, as for a
 “ thing we have both lost, and can neither of us do
 “ well without,—I’ll go to the world’s end with
 “ him:—But I hate disputes.” STERNE.

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 Barrister at Law of the Middle Temple.

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JOHN CARTER BROWN

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INTRODUCTION.

§ 1. **T**HE following Observations are intended principally as, An Attempt towards clearing the way for thinking accurately and writing intelligibly on Civil Liberty and the Principles of Civil Government. They have no pretensions to be considered as forming a regular Treatise, or as containing a System. To offer them to the Public under any idea of that sort, would expose them to the ridicule even of those who might think the Observations themselves just.

§ 2. The subjects on which they are made, seem to have been treated confusedly by the most esteemed Writers. I have endeavoured to point out some inaccuracies in the fundamental ideas given us by a few of those Writers: and I hope the superior respect due to Truth will be a sufficient apology for the remarks that are made, notwithstanding any inferior respect which may be thought due to Authors of great and established reputation.

§ 3. Among the various objects of human contemplation, each has been commonly thought easier to be understood, as it has in fact been understood more imperfectly. While our fundamental ideas on any subject are confused and indistinct, we make *apparent* advances in knowledge with great rapidity. The confusion itself in which we are involved, prevents our perceiving the difficulty of acquiring *real* knowledge: and we are apt to pronounce the subject an easy one, and level to a common capacity. But let us once begin to examine our ideas strictly, to ask ourselves simply what it is we really do know and what we do not know; then we begin to be sensible of difficulties:---and then it is too, and not till then, that we are in the way to real, useful knowledge.

§ 4. For instance, Mathematics are often spoken of as very difficult; and no one who has not given up to them some considerable time and attention, will venture to say any thing on a mathematical subject. Politics, on the contrary, are treated as easy to be understood: no one (or but here and there one) thinks it necessary to be silent on political subjects merely because he has not made them an object of serious and laborious study. The case is, that the Mathematician is obliged to distinguish and arrange his ideas, in order to have even the Appearance of knowing something:---he must have gone through some of the difficulties of acquiring real knowledge, in order to
pass

pais in the character of a Mathematician. But in Politics, the Appearance is more separated from the Reality. The Politician, without a single idea in his head that is perfectly distinct and unembarrassed, may go on at pleasure in the use of political words and phrases, to the great annoyance of all who think seriously and modestly for themselves; imagining that he understands his subject because he finds himself able to talk about it. But if an honest enquirer after truth will apply himself to these two branches of science, I believe he will find a *real* progress in knowledge *much* more easy to be made in Mathematics than in Politics.

§ 5. It is particularly to be wished that men would think with caution and would reason with diffidence in political matters, on this account, because political speculations have a great and immediate influence upon Action. But alas! this very thing makes against the wished-for caution and diffidence :---men are often engaged in the heat of action, before they have had time so much as to set themselves a going in a train of candid disquisition; and long before they can have arrived at a rational and satisfactory judgment, which might direct them how to act. He that would study a question in politics as he ought, must study it in the calm spirit of a Philosopher. But a Philosopher attaches himself to no party: and yet he who does *not* profess

himself of some party, will hardly be reckoned a Politician at all.---Strange! That the only proper way of studying Politics, should be an effectual way to exclude a man from the number of reputed Politicians!

§ 6. If the Title of these Observations be compared with the Title of the pamphlet lately published by Dr. Price; it may perhaps be thought that they were intended to be an Answer to that pamphlet, and intended for nothing more. This is not the case. I have gone so far as to examine some of the Principles delivered by that Author; but I do not pretend to have considered them all. I have also gone forwards sometimes in pursuit of such thoughts as presented themselves, without any intention of confirming, refuting, or examining what Dr. Price or any other Author had advanced. Therefore it will be in vain to expect that every sentence should have some immediate reference to the doctrines of this or that party. The whole is only a small collection of miscellaneous remarks; such however as actually occurred in a course of thinking. They are thrown freely into the common stock of speculations on these interesting subjects: and, if all that has been and will be thrown into that common stock can but enable the sincere and simple reasoner to form some satisfactory opinions, he will think it but of small consequence to see minutely from *whom* he received any assistance.

§ 7. I have confined myself to *Principles*, and have not applied them to the present measures of Government. Many reasons might be assigned for this:---among others, the want of authentic information about Facts. But I will rest upon this one: that Principles seem to have the best chance for being fairly discussed, either by being examined alone in the abstract, or by being referred to events taken from ages and nations in which we do not feel ourselves biased towards any Party. Indeed *both* an abstract view and a reference to such events, should be taken in, to form the best judgment. At least, while we are enquiring after some first principles to reason upon, we certainly should avoid referring continually to those particular facts and circumstances, on account of which the enquiry is set on foot, and to which the principles are finally to be applied.

PART I.

Of the Nature of Liberty in general.

S E C T. I.

Of the common Acceptation of the word, Liberty.

§ 8. **D**ISPUTES about mere words are to be found in abundance amongst the controversies of the learned. The fury and blindness with which such disputes have been carried on, as well as the perplexity and ignorance in which they have ended, are very well known. To take the pains of adding to the number, were an odious employment: and to have the *appearance* of a combatant falling forth in quest of such adventures, should be avoided by him who seems to himself to be going out in search of Truth.

§ 9. But it is hoped that he who labours to fix and ascertain the meaning of a word, is not on that account exposed to the common charge of disputing about words. On the contrary, nothing seems to bid fairer for preventing verbal disputes

disputes or cutting them short, than to keep a constant watch over our expressions; studying as much as possible, when we make use of any terms whatever, to form distinctly in our minds the ideas which those terms are supposed to convey.

§ 10. One method of ascertaining the sense of any word, is by an arbitrary definition. And this is in some cases necessary: as, where the term and the idea affixed to it are both entirely *new*, or where the word in its vulgar use is of a loose and indeterminate signification. And some persons even claim an absolute right in all cases to clothe their ideas in what words they please, and would needs exercise it with all the capricious despotism of a potter moulding his clay into the shapes that his fancy suggests: thinking that nothing more can be required of them than, to set out with distinct definitions and to abide by them.

§ 11. But surely it is a pity to perplex a subject with *arbitrary* definitions of terms which in their *common* and received acceptation are already sufficiently determinate. Still worse, if a word thus defined is made less determinate than it was before. Yet such seems to have been the fate of the term *Liberty*; as may perhaps appear in the course of these Observations.

§ 12. Let us first try to discover what idea is conveyed by the word in common conversation; and whether it is not precise enough to render

a new and arbitrary definition, which *changes* the idea, both useless and perplexing.

§ 13. Let any one suppose himself to have this question put to him, *Are you at Liberty to walk to the Royal Exchange to-day?* Would he not understand it the same as if he had been asked, *Does any thing forbid or hinder your walking to the Royal Exchange to-day?* If so, I would infer that the common idea of liberty is merely negative, and is only the *absence of restraint*.*

§ 14. To take another instance. *A prisoner gains his Liberty.* What do we understand by this? That a person who was confined within the walls of a prison, is now *not* confined. Still the idea is merely negative. Nothing more is implied. We are not certain that he has even quitted the prison;—there is a possibility that he may chuse to remain in it.

§ 15.

* To avoid ambiguity, it should be observed that Restraint sometimes means only such restraint as *actually prevents* an action from being done. But it is here used in a more extensive signification: so that a person would be said to be restrained from doing any action, if he was merely *forbidden* to do it; although the prohibition should not produce its effect of *hindering* the action. Thus, a person who is entrusted with a sum of money for particular purposes, is *restrained* from paying it away otherwise than according to the intents of the trust. He is forbidden by the laws of Morality, and perhaps by the Civil laws under which he lives. And in common language he would be said *not to be at liberty* to dispose of the money otherwise, even though he should *in fact* make another disposition of it.

§ 15. The Liberty of speaking, of writing, of shooting, of petitioning, of remonstrating, is not understood to mean any thing more than the *not* being restrained from speaking, writing, and so on. But more of this, when we come† to the second method of dividing Liberty into its different sorts.‡

§ 16. It may be thought improper to define Liberty at all, on account of its being what Logicians and Metaphysicians call a *simple* idea, and consequently not capable of a Definition: which is (properly) made by specifying the simple ideas that compose a *complex* one. But the definition

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above

† Sect. 3.

‡ After having settled the above notion of Liberty by examining the common use of the word, I read (with pleasure and attention) a Letter to Dr. Price, signed Attilius, in the *Gazetteer* of March 27, 1776. The author of this letter makes Liberty to be the Absence of *Coercion*; and observes that Coercion comprises Constraint and Restraint. But it seems to me, that Constraint is understood to include something more than a mere deprivation of liberty. If a person by violence puts a pen into my hand, and then *constrains* or forces me to write certain words and sentences, I am indeed deprived of the liberty of holding my hand still, or of moving it the way that I chuse; but that is not *all*,—I am forced into one particular and determinate action; which is something *more*:—there is a *positive* violence exerted upon me. With all due respect therefore to so accurate a writer as Attilius, and to the friend from whom he professes (in letter 5th, March 29.) to have received his definition of liberty, I still am inclined to think that the common notion of liberty is merely Absence of *Restraint*.

above given amounts to nothing more than what is to be done in ascertaining all simple ideas; that is, pointing out where they are to be found. For it is much the same thing, to define Liberty the Absence of Restraint, as to direct you to it by saying, that wherever you are not restrained, there you find what we call Liberty.

§ 17. To be *permitted* to do any act, is the same as having Liberty to do it. *Permission*, in the person or authority permitting, produces *Liberty* in the person who is permitted. This may be thought, by some, the best way of coming at the conception.

S E C T I O N II.

One method of dividing Liberty into its different Sorts.

§ 18. If we are then to take Liberty in this its *obvious* meaning, there seems to be an easy and simple division of it into as many different Sorts as there are different kinds of Restraints. These indeed might be divided and subdivided *in infinitum*: but since an accurate division of them, or a complete enumeration, is not by any means the object of our enquiry, let us take a few which may be most to the present purpose.

§ 19. We have heard much of Natural Liberty, of Physical, Moral, Religious, Civil Liberty. If these expressions had been used with precision in *any* sense by Writers on these subjects, it might have

have been trifling and impertinent to have found fault with the manner of using them. But if the term Liberty has not only been drawn aside from its *common* acceptation, but drawn from a *simple* and *intelligible* idea to ideas that are *complicated* and *confused*; it *must* be fair, it *may* be useful, to attempt to point out the sources of confusion.

§ 20. By Natural Liberty it seems easy to understand, *that liberty which the laws of Nature allow*. Now the laws of Nature allow liberty wherever they impose no Restraint: and therefore wherever no restraints are found imposed by the laws of Nature, we may say that there is Natural Liberty. And hence we have also this definition of it; the *absence of restraints imposed by the laws of Nature*. If no law of Nature forbids my killing a hare or a partridge for food, I have Natural Liberty to do it, whatever restraints I may lie under from other causes. And if there is a law of Nature, which says, Thou shalt not be cruel, even to a beast; or, Thou shalt not plunge a dagger into the breast of an innocent person; I can never be at liberty to give pain wantonly or to spill human blood unprovoked, till the laws of Nature be repealed.

§ 21. If any should oppose the authority of Mr. Locke, or of the learned Commentator on the laws of England, to the definition above given; it might be answered, that both of them seem to
have

have intended not so much to *define* Natural Liberty, as to give a short description of the State and the Rights of men, living in the manner in which men might be supposed to live when not connected by social ties.

§ 22. Mr. Locke has these words,* “ To understand political power right, and derive it from its original, we must consider, what state all men are naturally in, and that is, *a state of perfect freedom* to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man.” What he says afterwards†, seems to be much to the same effect. He presumes upon the commonly received notion of liberty being sufficiently understood; and therefore has only occasion to describe how far he thought men were entitled to such liberty, while they lived in a state of Nature; and that was, as far as the laws of Nature permit. It was his Opinion, that men in a state of Nature were subject to no other restraints besides those imposed by

* On Government, B. 2. § 4.

† Ibid § 22. “ The *natural liberty* of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of nature for his rule.” And, at the end of the same paragraph, “ *Freedom of nature* is, to be under no other restraint but the law of nature.”

by the laws of Nature; and that, where these laws were silent, every one had a right to follow his own will. I meddle not here with the Justness of the opinion; but only contend that the passages referred to are to be understood rather as *explications of an opinion*, than as *definitions* of Natural Liberty.

§ 23. I should wish also to interpret in the same manner the words of the venerable Judge, who has enlightened his country by a Commentary on its laws, and who by that useful work has pointed out and smoothed the way into the recesses of Law, for young, discouraged, and bewildered students. His words are these,†
 “ The absolute rights of man, considered as a
 “ free agent, endowed with discernment to know
 “ good from evil, and with power of choosing
 “ those measures which appear to him to be
 “ most desirable, are usually summed up in one
 “ general appellation, and denominated the
 “ natural liberty of mankind. This natural
 “ liberty consists properly in a power of acting
 “ as one thinks fit, without any restraint or con-
 “ trol, unless by the law of nature; being a
 “ right inherent in us by birth, &c.” But
 neither can these words be understood as a De-
 finition of Natural Liberty: it cannot be con-
 ceived

† Blackstone's Commentaries, B. 1. Ch. 1. In third Edit.
 4to. p. 125.

ceived to be meant that the natural liberty of walking out in the open air (for instance) consists in the *power* of walking out in the open air "without any restraint, &c." Nor can it be said to be a *right* of walking out, unless we depart from the received notions of Right and Liberty:---for, according to these, my natural Right of walking out implies that the laws of Nature *forbid others* to detain me; whereas my natural Liberty of walking out should seem to imply nothing more than this negative idea, that the laws of Nature *do not forbid me* to walk out. I will hope then that I do not misunderstand the words of the learned Author, when I interpret them not as conveying a strict Definition of Natural Liberty, but rather as amounting to this Proposition; namely, that every man has a natural Right to the enjoyment of his natural Liberty†, or, that before he enters into Society he is under no obligation to obey the will of any other man.

§ 24. It seems fair to conclude, (from the common acceptance of *Liberty*, as explained in the preceding section, and from what has been offered in this section,) that without forcing any
new

† Mr. Locke uses an expression very like this, when he calls the natural Equality of men, "That *equal right*, that "every man hath, to his *natural freedom*." On Government, B. ii. § 54.

new meaning either upon the word Natural, or Liberty, we may define Natural Liberty, as before, *that Liberty which the laws of Nature allow*, or, *the absence of restraints imposed by the laws of Nature*.

§ 25. What should now prevent us from going on to say that Physical, Moral, Religious, Civil Liberty, is, that Liberty which Physical laws allow, that which the laws of Morality, the laws of Religion, the laws of Civil Society allow? Or, in the other form, the absence of restraints imposed by Physical laws, by the laws of Morality, of Religion, of Civil Society? Or, more concisely, thus, *the absence of Physical restraints, of Moral, of Religious, of Civil restraints?*† The Division appears simple and obvious: but the Writings that have been sent into the world, treating of Liberty or other subjects connected with it, would often be totally unintelligible, if in reading them we should carry along in our minds these ideas affixed to the expressions. We shall be better prepared to perceive

† I must particularly caution any one who may read this, against imagining that these sorts of Liberty or of Laws, are mentioned with any view to an accurate and complete division. Under such a conception it might be objected, that Natural Laws ought not to be considered in contradistinction to Physical and Moral Laws: for that Natural Laws would be more properly subdivided into Physical and Moral; or at least, that all Moral Laws are Natural Laws. The discussion of this point seems foreign to the present object of enquiry.

ceive the confusion that has spread itself over these subjects, after attending to the different kinds of liberty, as they may be distinguished in another way of dividing it.

S E C T I O N I I I .

A second Method of dividing Liberty into its different Sorts.

§ 26. The first method of tracing out the Sorts of Liberty, pursued the different kinds of *Restraint* by which a man may be kept from exercising his powers. It may be useful also to make another division of it by viewing the different *Actions* or Kinds of action, from which a man may be restrained. We might in this case, as we might have done in the former, divide and subdivide at pleasure:---but, in either case, a minuteness of division or enumeration would carry us wide of our purpose. We will, as before, mention a few of the Sorts of liberty.

§ 27. Liberty of Speech, the liberty of the Press, Personal liberty, are three sorts of liberty, denominated from the particular kinds of Action which they leave a man free to perform. Any one enjoys these three sorts of liberty, who is not restrained from speaking what he chuses to speak, from printing what he chuses to print, or from moving his person where his wishes lead him.

§ 28. Now

§ 28. Now one source of the confusion complained of seems to be, that the terms, Moral Liberty, Religious Liberty, Civil Liberty, are sometimes referred to this method of division and sometimes to that explained in the preceding section. Thus, Religious liberty, instead of the idea which under the former division we were naturally led to join with it, may be used to convey this other meaning, the *absence of restraint in matters of Religion*.

§ 29. The instance of Toleration may illustrate this point:---*that* toleration I mean, so much spoken of, so highly and so justly valued, in this country. Toleration (considered as in the Subject enjoying it rather than as in the Magistrate granting it) seems to be, the absence of *Civil Restraints* in matters of *Religion*. In respect of the Restraints referred to, it is Civil liberty; in respect of the Actions in which it makes the Agent free, it is Religious liberty.

§ 30. There is also a Liberty which may be called Religious in respect of the *Restraints*, and Civil in respect of the *Actions*. For instance; so far as Religion leaves us unrestrained in those various transactions of commerce and of daily intercourse which arise from our being connected together in Civil Society, so far we have in these transactions the particular kind of Liberty I am speaking of; namely, a freedom from the

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restraints

restraints of Religion in matters of Civil intercourse. If the laws of Religion allow the use of commerce six days in the week, and forbid it on the seventh; the Liberty spoken of is enjoyed (in the article of commerce) for six days, and on the seventh it is wanting. If the laws of Religion forbid us, in the intercourse between citizen and citizen, to hurt our fellow-subject in his property, in his person, in his reputation, the liberty here spoken of is (in these particulars) totally wanting.---It may be observed by the way, that the laws of Religion and the laws of Morality impose the same restraints in many cases: and in those cases, Moral liberty coincides with Religious.

§ 31. There may be other ways, besides these two, of dividing Liberty into different Sorts: but as none occur that appear of immediate consequence to the present considerations, it will be better to proceed to something else.

S E C T I O N IV.

Remarks on Dr. Price's Definitions of Physical, Moral, and Religious Liberty.

§ 32. The Definitions which I am now going (with all due respect I hope) to consider, are those lately given to the world in a pamphlet that is well known, that has been much read,
much

much praised, and has also drawn much abuse upon its Author. I should be sorry to add to the abuse:---whether I shall have added to it, will be for others to judge.

§ 33. If the commonly received idea of Liberty is merely negative, (which was attempted to be shewn in Sect. I.) it follows that, to define Physical Liberty as a *Principle*, and Moral and Religious Liberty as *Powers*, is to depart from the *commonly received* idea of liberty. For, to have the Principle or Power *by* which any action is to be performed, is clearly different from the merely *not* being restrained from doing that action.

§ 34. But though defining a term agreeably to its common acceptation, is (when possible) of use towards making any subsequent doctrines more easily understood, it certainly is not to be rigorously insisted on. It may be thought sufficient to abide strictly by the idea which we have given to any term, using it always in that sense and no other. And yet it seems to me that something more than this may be required, in cases where any general idea is divided into its different sorts. There should in such cases be a certain Conformity between the different particular ideas into which the general one is branched out:---but this may be best explained by an Instance,

§ 35.

§ 35. We might define Regal power, Consular power, and Tribunitial power, to be the power which the King has over the Citizens, that which the Consul has over them, and that which the Tribune has. We *might* also, if we pleased, define them to be respectively, the power which the Laws have over the King, that which they have over the Consul, and that which they have over the Tribune. Nay, we might even define them to be respectively, the power by which the King is appointed, that by which the Consul is appointed, and that by which the Tribune. Take the expressions according to any *one* of these Sets of definitions, and you find at least a Conformity among the meanings they are made to bear:---the differences in each Set refer to the same point. But should we define Regal power to be the power of the King over the Citizens, Consular power to be that of the laws over the Consul, and Tribunitial power that by which the Tribune is appointed; there would be an Incongruity in these definitions, which would puzzle the most attentive reader, though we should use our terms strictly and constantly in the senses thus first imposed on them.

§ 36. The Definitions which are the subject of this section, appear liable to a charge of incongruity, the same in *kind* with that just explained, though in a less degree.---But it may be proper to transcribe them,

them. “ †By PHYSICAL LIBERTY I mean that
 “ that principle of *Spontaneity*, or *Self-determina-*
 “ *tion*, which constitutes us *Agents*; or which
 “ gives us a command over our actions, render-
 “ ing them properly *ours*, and not effects of the
 “ operation of any foreign cause.---MORAL LI-
 “ BERTY is the power of following, in all cir-
 “ cumstances, our sense of right and wrong; or
 “ of acting in conformity to our reflecting and
 “ moral principles, without being controuled
 “ by any contrary principles.---RELIGIOUS LI-
 “ BERTY signifies the power of exercising, without
 “ molestation, that mode of religion which we
 “ think best; or of making the decisions of our
 “ own consciences, respecting religious truth, the
 “ rule of our conduct, and not any of the deci-
 “ sions of others.”

§ 37. If Physical Liberty is that *principle* which
 constitutes us *Agents*, it were obvious to expect
 that Moral Liberty should be some other *prin-*
ciple, rather than the *power* of acting in confor-
 mity to any *principles*. So again, if Moral Li-
 berty is the power of acting in conformity to
 our moral principles, without being controuled
 by any *contrary principles*; it were easy to con-
 ceive Religious Liberty as the power of acting
 in conformity to our religious principles, without
 being controuled by any principles *contrary to*
our religious ones: but when the distinguishing
 mark

† See Observations on the Nature of Civil Liberty, &c.
 by Dr. Price, 5th Edit. p. 3.

mark of Moral Liberty is a freedom from *internal* immoral principles, while that of Religious Liberty is a freedom from *external* molestation by others, we are lost and confounded in attempting to compare them.

§ 38. The Author's definition of Physical Liberty conveys nearly the idea which, I think, has been by the generality of writers affixed to the term *Free-will*. This is confirmed by his own explanation of it:†---“ Did our volitions originate not with *ourselves*, but with some cause over which we have no power; or were we under a necessity of always following some will different from our own, we should want PHYSICAL LIBERTY.” This explanation consists of two parts. The first is, if our *Volitions* originate with some foreign cause, we want Physical Liberty. Here then our Volitions are not free; or, we want Free-will. I by no means contend for the propriety even of such an expression as Free-will, or Freedom of Will: and I should be exceedingly sorry to bring either myself or any one else into that ocean of controversy into which Metaphysicians, Moralists, Philosophers, Divines, have launched in great numbers, and in which they have run foul of one another for want (as it should seem) of Light to steer their course. But it seemed proper to take notice, that such Physical Liberty as comes under the *first part* of the explanation,

nation, is what other writers have expressed by Free-will.

§ 39. In explaining these definitions, the Author has pointed out the nature of Slavery or Servitude, by contrasting it with the different kinds of Liberty.* He has also marked the limit between Liberty and Slavery, in general. He says,|| “ As “ far as, in any instance, the operation of any “ cause comes in to restrain the power of Self- “ government, so far Slavery is introduced.” It may be asked; Does not every law of Civil Society, every law of Morality, and of Religion, restrain self-government? If a law says, thou shalt do *this*, and, thou shalt not do *that*; thou shalt (for instance) execute an office, and, thou shalt not embezzle the public money: does not the law restrain a man’s self-government or self-direction, by which he might have declined the office or seized the money? And is a man called a *Slave* for being subject to such a law? I think not. There seems to be always implied in Slavery an idea of *excessive* subjection. No one is called a Slave, I believe, unless the obedience exacted from him is thought to *exceed* some rule of Right or Convenience, to be hurtful to the Public, or oppressive and injurious to the Individual. A man is a Slave to his Prince, when his actions depend more upon the will of his prince than the purposes of Civil Society require: he his frequently
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* p. 4. || p. 5.

said to be a Slave to his Profession, when he attaches himself so much to the employment of it as to defeat some principal purpose of his life, or otherwise injure himself in a very high degree: he is called a Slave to his Passions, when he indulges them to *excess*. We never hear of any one being a Slave to his *Conscience*; for, that having by the Constitution of man a natural *supremacy* over all his passions, affections, and principles of action, his obedience to that governor cannot be *excessive*.

§ 40. It might be of use, in considering the nature of Slavery, to distinguish carefully between the *proper* sense of the word, and the *figurative* senses. Perhaps, the original and only proper meaning of it is, Domestic Slavery; including what Montesquieu speaks of under the names of Domestic and Civil Slavery, but not what he calls Political Slavery.

SECTION V.

Further Observations on the different Sorts of Liberty.

§ 41. We will now venture to use the term Liberty in the sense before explained, for the *absence of restraint*; Natural Liberty, for the *absence of Natural restraints*, that is, of restraints imposed by the laws of Nature; and in like manner, Physical,

|| See Bp. Butler's 2d. Sermon.

tical, Moral, Religious, Civil Liberty, for, the *absence of Physical, Moral, Religious, Civil restraints*, respectively.

§ 42. These several ideas require perhaps some illustration by Instances. An attempt to illustrate them will at least be pardoned.---But it should be previously observed, that Physical Restraints are no other than restraints by *Force*, sometimes called *external force*. If you are pressed down by a heavy stone laid upon your body; the operation of that which restrains you from moving, is reducible to that Physical Law by which the stone *gravitates*. And in like manner, if you are held by a Chain, or the muscular strength of another man; the restraining power which confines you, is to be referred to some of those Physical Laws which govern all Matter and Motion.

§ 43. To proceed then. Let me be indulged in taking a familiar instance, without being thought to offend against the seriousness of my subject. Suppose a person in company with others to ask them so common a question as this, "Will you go to the play?" The same answer is given by every one; "No, I am not at Liberty." It is asked again, "Why? What hinders you?" One says, I cannot get away from this person who holds me: I want Physical Liberty. A second says, I believe plays to be hurtful and immoral: I have not Moral Liberty. A third pleads Religious restraint;---perhaps that

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it is Friday evening, and of course that his Sabbath is commenced. A fourth complains of the want of Civil Liberty; because the sumptuary laws of the country forbid a person of his station in life to appear in a place of public diversion. We might add a fifth, who is going to mount guard, and so lies under military restraint; and a sixth, who pleads a rule of the family of which he is a member, and wants domestic liberty. And so on.

§ 44. One way of considering the subject before us, will be to examine how Liberty in general, or any particular Sort, may be *greater* or *less* in degree; and whether the *greatest* degree of it is always, or in any case, the *best*.

§ 45. Our Liberty in general must increase by the removal of *any* restraint whatever, and decrease by the addition of any. The greatest degree of this liberty must be the absence of *all* restraint. A Being who enjoys this greatest degree, must be subject to no rules by his Constitution or Nature, never kept back by Force from exerting his powers, must be under no Moral, Religious, or other Obligations. It will be more difficult to conceive a *least* degree of this liberty. We may indeed picture to ourselves a Being who has *every* action of his life, with the precise mode of it, prescribed and chalked out to him, by some law or other. Such a Being would be said, in one sense, to have *no* liberty. But though he is not perfectly free in any one *action*, yet he may be free from many parti-

particular kinds of *restraint*; and in that sense, may have some Liberty.

§ 46. Our Religious Liberty must be *greater*, as the Restraints imposed by Religion are fewer. Thus, Christ, in abolishing the Rites of the Jewish Religion, increased the religious liberty of the Jews. The *greatest* religious liberty (in *this* sense) is, to be without any restraints from religion at all†. To have *no* religious liberty, is, to have no action left indifferent by the laws of our religion, but to be prescribed to by them in every the minutest action. That it is not for the Good of mankind, either to have this liberty in the *greatest* degree, or to have *none*, seems pretty evident. To be free from all religious restraints, must be hurtful, while men continue to conduct themselves as they have hitherto usually done: and, to have no actions left indifferent, would be troublesome, and at the same time would, in many cases, bring no advantage to compensate the trouble.

§ 47. Our Civil Liberty, in like manner, is *greater*, as the restraints imposed on us by Civil Laws are fewer. The greatest degree of it would be, to have no Civil Laws at all. This is what

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† Let it not be forgot in what sense Religious Liberty is here used. For it has been shewn before (§ 28.) to be capable of a different meaning, namely, the absence of restraint *in matters of Religion*. And, according to that idea of it, the *greatest* religious liberty would be, to be without restraint of any sort in *all* matters of religion.

no one would wish for; and therefore it may be worth while to consider what has been meant by some writers who, in passing their encomiums on Civil Liberty, appear to have taken it for granted that the *greater* the Civil Liberty is in any state, the *better*. But the consideration of this point will be more properly reserved to the second Part of these Observations. To have *no* Civil Liberty, is, to be confined and directed in *every* action, however trifling, by the laws of Civil Society. And the nearer we approach to this state, the *less* is our Civil Liberty. Nothing need be said to shew that it may possibly be *too small*.

§ 48. There is one species of liberty which cannot be too great: the *greatest* degree is the *best*:---I mean, the *absence of restraints imposed by the arbitrary Violence of individuals, or, that Liberty which the Violence of individuals allows to the peaceable citizen*. This cannot be excessive; for the restraints imposed by arbitrary Violence cannot be too few:---it were best if such restraints were *entirely* removed,

P A R T II.

Of Civil Liberty and the Principles of Government.

S E C T. I.

General Idea of Civil Liberty.

§ 49. **C**IVIL Liberty has already * been defined, the *absence of Civil Restraints*. And it seems, that in thus defining it we do not depart from the *commonly received* notion either of the word, Liberty, or the word, Civil: if so, it is hoped that the definition will not only be allowed to be in strictness a fair one, but moreover easy to be understood, and also fitted to assist us in understanding any argumentation on the subject.

§ 50. Some few remarks have likewise been made upon Civil Liberty in the course of the first Part. But as it is the principal object of
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our enquiry, something may be added here, to explain farther the general idea of it.

§ 51. Different persons in the same community may enjoy different *degrees* of Civil Liberty. For instance, the King of Great Britain is free from restraints in a variety of particulars in which his Subjects are restrained: and by the absence of such restraints he is possessed of greater Civil Liberty than his Subjects. † “No suit or action can be brought against the king.” His Civil Liberty, as it regards his *Person*, is in the very greatest degree; his Person is *by law* subject to *no* restraint:---‡ “by law the person of the king is sacred.” In like manner, persons having Privilege of Parliament, have thereby greater Civil Liberty than others; being less restrained in their actions by Civil Ties.

§ 52. Civil Restraints cannot properly be said to affect any other kind of liberty besides Civil liberty. If I am allowed by the laws of Nature to kill a partridge or a pheasant for food, a Civil law forbidding me to kill those birds, does not take away my *Natural*, but my *Civil* liberty of killing them. Natural restraints are surely neither increased nor diminished by an alteration in the Civil Laws:---nor by any thing but an alteration in the laws of Nature. Before the promulgation of such a Civil law, I am free in this action (of killing the bird), both by the laws

† Blackst, Comm. B. I. Ch. 7. p. 242.

‡ Ibid.

laws of Nature and by those of Civil Society : after its promulgation, I am still free by the former, but not by the latter. My Civil liberty then is diminished:---my Natural liberty remains the same as before.

§ 53. So likewise, Alterations in Civil Liberty do not affect our Moral, Religious, and other Liberties ; if these terms are carefully used in *like* senses, according to the Method of dividing Liberty before explained ; in Part I. Sect. 2. With this caution therefore, I leave every one to suggest Instances to himself by way of Illustration.

§ 54. There is a Liberty which is the Result of Natural and Civil Liberty, as it were, mixed together. Natural Restraints bind a man in one action, Civil Restraints bind him in another ; the liberty left to him upon the whole, is less than either his Natural or Civil Liberty taken singly. Many actions are forbidden by the laws of Nature, as hurtful merely to the Individual who commits them : such as Drunkenness, and acts of Imprudence. About these, we generally find Civil laws to be silent*. On the other hand, Natural laws are silent about many particulars in which the laws of Civil Society prescribe to us ; as, about the Modes of transferring property. Sometimes a Civil law merely enforces a prohibition of Nature. Again, it very frequently happens, that a Civil law, though it has the same
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* See Blackst. Comm. B. I. Ch. 1, p. 124.

action for its object as some law of Nature, does yet narrow our liberty, by being more minute and circumstantial in its prohibition. And it seems, that the name of Civil Liberty is sometimes given to this compounded or resulting liberty, which we enjoy upon the whole by the joint permission of Natural and Civil laws.

§ 55. If any one should ask, What is the Civil Liberty of a *Nation* or *Community*? I should lead him to answer himself, by putting this other question in return, What are the Civil Restraints by which a Community can be bound? If this Community is the *whole* of an independent Nation, the idea of Civil Liberty seems not at all applicable to it: because it can be under no Civil Restraints. Being independent, it must make its own laws, to govern its Members by: but these laws cannot bind the whole as *one body*; for this one body can certainly repeal any such law at pleasure:---and it is an inconsistency, to say that any person, individual or collective, is *bound* by a law which he can at pleasure repeal. I do not say that a nation cannot bind itself by a treaty or a promise made to a distinct nation: but this is not a *Civil* tie; this tie has its strength from the laws of Nature, from that branch of them called the laws of Nations. If a *part* of an independent nation obtains the name of a Community, it is evident that such Community may be subject to
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Civil laws ;---those made by the legislative power of the *whole* nation, wherever that resides.

§ 56. I will venture in the next Section to examine some ideas given us by a few of the Writers on Civil Liberty. If it should appear that the subject has been treated rather confusedly, that will best justify me in having attempted to lay a foundation for thinking about it with greater distinctness.

S E C T. II.

Some Ideas of Writers on Civil Liberty, examined.

§. 57. Montesquieu treats of Political Liberty in the eleventh and twelfth books of his *Spirit of Laws*. It is either the same with that which other Writers have called Civil Liberty, or at least is included in that: therefore, what he says about it, falls within the subject of this section.---He frequently calls it *Liberty* only.

§ 58. The eleventh book is upon the Laws that form Political Liberty with regard to the *Constitution*. The nature and properties of what are called *free governments* or *free states*, come here into consideration. We have before* remarked, that the idea of Civil Liberty is not applicable to the *whole* of an independent nation, taken collectively. What then is meant by a *free Government*? This will be best answered in considering the definition of Liberty given by Montesquieu. For it seems to me, that when he says, " Liberty

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* § 55.

“ is the right of doing whatever the laws permit,”† he means the same as if he had said, That is to be called a *free Government*, whose Constitution gives and secures to every citizen a right of doing what the laws permit. He is professedly speaking of Political Liberty as it regards the *Constitution*:---for he afterwards gives a new definition of it, as it regards the *Subject*.

§ 59. And as he did not in this place mean to define the liberty enjoyed by the Subject; so neither could he possibly mean to define the liberty enjoyed by the whole State as a body:---in that sense, Liberty would be, a right in the State to do whatever the laws of the State permit. No one will suspect *that* to have been the meaning of so judicious a Writer.

§ 60. In a *free Government* therefore, thus understood, every citizen enjoys his Civil Liberty undisturbed by any restraints arbitrarily imposed: or at least, whoever does disturb him in doing what the laws permit, is liable by the laws to be punished. No matter what degree of liberty the laws allow:---if they do but protect the citizen in the enjoyment of that Civil Liberty, the Government is said to be free.

§ 61. In his twelfth book, he goes on to the consideration of Laws that form political liberty as relative to the *Subject*. And there he gives an
idea

† “ La liberté est le droit de faire tout ce que les lois permettent.” L. 11. Ch. 3.

idea of liberty as consisting in* Safety, or in the Opinion that a person has of his safety. This does not perhaps differ materially from the definition he had before given of the Liberty of the Subject; namely†, “ A Tranquillity of mind, “ arising from the Opinion that every one has of “ his safety.”

§ 62. But it appears to me, that men in general conceive their liberty to be a very different thing from either their Safety, the Opinion that they have of their safety, or the Tranquillity of mind arising from such opinion. No doubt, this experienced and sagacious Author has left us a large and useful stock of knowledge in this part of his work, as well as in others. But he seems to have gone beyond the mere idea of Liberty. If I might be allowed to hazard such a conjecture as the following, I should say that he seems first to have confounded Liberty with the *Right* to it, and afterwards to have substituted instead of the Right these good *Effects* which it produces; namely, Safety, and the Tranquillity of mind derived from it.

§ 63. The Marquis Beccaria, speaking of men uniting themselves in Society, says that they sacri-

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* “ Elle consiste dans la sûreté, ou dans l’opinion que l’on “ a de sa sûreté.” L. 12. Ch. 1.

† “ La liberté politique dans un citoyen est cette tranquillité “ d’esprit qui provient de l’opinion que chacun a de sa “ sûreté.” L. 11. Ch. 6.

ficed one part of their liberty, to enjoy the rest in peace and security : and adds, that “ the sum of
 “ all these portions of the liberty of each indivi-
 “ dual constituted the sovereignty of a nation ;
 “ and was deposited in the hands of the sove-
 “ reign, as the lawful administrator.”*

§ 64. In what manner do these portions of liberty added together constitute the Sovereignty of a nation? Does a Sovereign acquire to himself all the liberty, or the liberties, which the Individuals give up? And does he acquire nothing else? A man has a liberty by Nature of moving about at pleasure upon the earth. Suppose now that a number of men agree to abridge this liberty; that they allow each Individual among them to appropriate to himself a quantity of land, that they give him a right to exclude others from that appropriated parcel, and lastly that they subject the future regulations of their several properties to some one person or number of persons, whom they call the Sovereign. If these portions of liberty given up *constitute* the Sovereignty, we should expect that the Sovereign had

* Essay on Crimes and Punishments. Ch. I.—I have given the printed translation, though it is not a literal one. For it does not vary from the original so as to affect the light in which we are now viewing this passage. The words in the original are, “ La somma di tutte queste porzioni di libertà
 “ sacrificate al bene di ciascheduno forma la Sovranità di
 “ una Nazione, ed il Sovrano è il legittimo depositario, ed
 “ amministratore di quelle.”

had acquired some additional Liberty (if possible), more than he had by Nature, of moving about upon these appropriated parcels of land: and also that he had acquired nothing else. Whereas he has acquired something very distinct from that;---an Authority of deciding questions concerning property, and of regulating the various possessions of his subjects.

§ 65. Mr. Locke speaks of Liberty in the following words†; “ The *liberty of man*, in society, is to be under no other legislative power, but that established, by consent, in the commonwealth; nor under the dominion of any will, or restraint of any law, but what that legislative shall enact, according to the trust put in it.” Could Mr. Locke possibly mean to imply, that a man, living in society, has *no degree* of liberty, unless he lives in it upon the very terms here described? It will not be supposed. The inference is, that Mr. Locke is not to be understood as *defining* the liberty of man in society. His words appear rather to describe the condition of those who in his opinion enjoyed Civil Liberty in *perfection*, or in the *best degree possible*. And he adds, “ *Freedom of men under government* is, to have a standing rule to live by, common to every one of that society, and made by the legislative power erected in it; a liberty to follow my own will in all things, where the rule prescribes

† On Government. 2. § 22.

“prescribes not; and not to be subject to the
 “inconstant, uncertain, unknown, arbitrary will
 “of another man.” All this, as an addition to
 his description, may readily be admitted: but,
 to suppose that he meant to define a term and
 went on in this manner varying and perplexing
 his definition, would be far from doing honor to
 so renowned a literary character as that of Mr.
 Locke. And yet it must be confessed, there is
 in the words quoted an appearance of a defini-
 tion: which is apt to lead us into some confu-
 sion.

§ 66. The many and great encomiums that
 have been bestowed upon Civil Liberty by va-
 rious Writers, create some desire in an attentive
 reader to see distinctly what that is of which they
 have spoken so highly. The most distinct idea
 that I have been able to form of it, may be ex-
 plained in the following manner.

§ 67. Conceive a man held by various re-
 straints; Natural, Civil, Religious, and any
 others. The liberty which all these restraints,
 taken together, leave him in possession of, might
 be expressed by the word Liberty, simply: but, to
 avoid ambiguity as much as possible, let us give
 it a peculiar appellation; let us call it, *General*
Liberty†. And let us recur to the senses we have
 before

† We might conceive this General Liberty in different
 views, as allowed in matters of Religion, in Civil, in Dome-
 stic Matters, and so on; according to the division explained in
 Part

before ventured to affix to the terms Civil Liberty, Natural Liberty, and others; namely, the absence of Civil restraints, Natural restraints, and so on.

§ 68. Now, it is plain, that this General Liberty, as well as many particular kinds, may be either too great or too small; a man may be too little or too much restrained; both in respect of his own Good, and the Good of those with whom he is connected in society. To find the proper Medium, is the grand problem for the investigation of legislators in the establishment of political liberty. And *that* Civil Liberty which has been the subject of so many panegyrics (and very deservedly), seems to have been, Some degree or state of *General Liberty respecting Civil matters*, either the best possible state of it or not far from the best on the one side or the other;---or more frequently, the *Right* to such Liberty, considered as *given and secured by the Civil Laws*.

§ 69. This is indeed a blessing highly valuable. The warmest enthusiast in the cause of Liberty may indulge himself here, in his encomiums, without much danger of extravagance:---to contend for this blessing with bravery and perseverance, to study the improvement of the civil Constitution with this in view,---these works mark the true Hero and the genuine Patriot.

§ 70.

Part I. Sect. 3.—We are now speaking of it only as it regards Civil matters.

§ 70. But we are liable to err, if, having once got the idea of something *valuable*, we think of course that we cannot have too much of it. Thus, the panegyrists on Civil Liberty, forgetting the excellence of the happy medium, have spoken frequently of that Liberty as the *best* which is the *greatest*; or have called that the *greatest* degree of it which, being far removed both from the *greatest* and from none at all, is more properly distinguished as the *best*.

§ 71. Yet it is evident that the notion of a *Medium* has been conceived by those, who, in speaking of Liberty, have opposed it to Tyranny on the one hand, and to Licentiousness on the other. Where Tyranny prevails, there the General Liberty, above explained, is too small, and falls short of the *best* degree. Where Licentiousness prevails, there that General Liberty exceeds the due medium,---in the *licentious* citizens; though the peaceable members of the community must be abridged of their liberty by this Licentiousness, as well as by the Tyranny of one or of a few. And even the licentious cannot have this increased liberty *secured to them by the laws*.

S E C T I O N III.

The Nature of Civil Liberty, as explained by Dr. Price.

§ 72. The Definition is this†; “CIVIL LIBERTY is the power of a *Civil Society* or *State* to govern itself by its own discretion; or by laws of its own making, without being subject to any foreign discretion, or to the impositions of any extraneous will or power.”

§ 73. Enough has been already said of the difference between Liberty and Power, in the *common* use of these words. There is no occasion to repeat it here.

§ 74. But, what is a *Civil Society* or *State*? Is it one of those independent communities into which mankind is divided? Is it one of those subordinate communities into which the independent ones are subdivided? Or, may it be taken indifferently for one or the other?

§ 75. If the word *State* means an independent Community, the Civil Liberty defined can have no reference to the Restraints imposed by Civil Laws. The very idea of such a State is incompatible with those Restraints*. The laws of Nature (prescribing to Nations, as to unconnected Individuals, their behaviour towards one another), are

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† See Observations on the Nature of Civil Liberty, &c. p. 3.

* See above, § 55.

the laws which bind such a State; not Civil laws :
---these are *made* by the State.

§ 76. If the word *State* means a subordinate Community, the Civil Liberty defined cannot possibly be possessed by such a State. Whatever laws this State may enact, they must be in the nature of Bye-laws, and can have effect only by Permission of the whole independent Community of which this subordinate one is a part. It is incompatible with the nature of this State, that it should govern itself by its own discretion: for, as soon as it does that, it changes its nature, and becomes, instead of a subordinate, an independent Community.

§ 77. Lastly, if the word *State* is to be taken indifferently for any Civil Community, independent or subordinate; the Definition leads us to this conclusion, that Civil Liberty is to be found in those States, or those States are to be called *free*, which have a power to govern themselves by their own discretion, and those are not free, in which that power is wanting. It is perhaps farther to be understood, that this Power should be conceived as existing in various *degrees*; and that a State is to be called more or less free, as it has a greater or less share of such power.

§ 78. But let us see what idea we get of Civil Liberty as enjoyed by the *Subject*. For, whatever agreeable emotions the very mention of a *free state* may raise in the mind of an Englishman, by habit,
(or,

(or, if you please, by birth,—born, as he is, of “a nation, in whose veins the blood of freedom “circulates”); yet Liberty, like every other blessing, to be viewed and estimated accurately, must be considered in respect of the advantage it brings to each Individual. The Definition may perhaps seem to imply, that free Subjects are to be found in those States which have a power to govern themselves by their own discretion, and in no others; that is, in independent Communities and not in subordinate ones. But it may be asked, Is not every man a member of some independent community? Whether you are an Englishman, a Frenchman, or a Turk, you are a member of a civil community whose laws are independent of the will of every other civil community. The consequence is, that you are free. It may likewise be asked, Is not every man a member of some *subordinate* community? If you are even an Englishman, you are also member of some particular Parish: and your Parish is a subordinate community; it has not the power of governing itself by its own discretion, but is subject to the laws of the Land. The consequence is, that you are *not* free,

§ 79. I by no means intend to go on with a minute discussion of particular sentences in the explanation of civil liberty given to the Public by this Author. It may be proper however to produce an instance of the manner in which he

has used the word Liberty, after having given the definition above quoted. He says*, "If a
 "state is so sunk that the majority of its repre-
 "sentatives are elected by a handful of the
 "meanest persons in it, whose votes are always
 "paid for; and if also, there is a higher will on
 "which even these mock representatives them-
 "selves depend, and that directs their voices: In
 "these circumstances, it will be an abuse of language
 "to say that the state possesses Liberty." Sub-
 stitute, for the word Liberty, the definition of it,
 (he is here evidently speaking of *Civil* liberty;) and then the sentence last quoted must end as
 follows; "In these circumstances, it will be an
 "abuse of language to say that the state possesses"
 "the power" "to govern itself by its own discre-
 "tion; or by laws of its own making, without
 "being subject to any foreign discretion, or to
 "the impositions of any extraneous will or
 "power." That is, in short, if the representa-
 tives and their electors are corrupted, and one
 man or a few men are able in effect to enact what
 laws they please, then the state does not possess
 the power of governing itself by its own discre-
 tion.---It seems to me far otherwise.

§ 80. For the power is not lost out of the
 State by being transferred from one set of men
 in it to another set of men who are also *in it*.
 The particular Distribution of the power among
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the members of the society, may be wrong; it may be impolitic, it may be unjust: but the *State* has still as much as ever the power of governing itself. There is indeed a Change made, as to the Individuals with whom the power is *lodged*: ---and it is a Change of a very important nature. An apprehension of coming into the situation here described by the Author, may justly alarm a people who value themselves upon their Liberty. As to the *fact*, that this nation or any other is now actually approaching to such a situation, or already arrived at it; I enquire not. What I contend for is, that, if Civil Liberty is to be taken in the sense in which he has defined it, *then* the circumstances described in the above-cited passage do not immediately affect it.---A *State* is neither more nor less free, according to his definition, on account of its power being lodged in proper or improper hands.

§ 81. A Definition should by no means be confounded with an Inference from premises. This Author says||, “Then only, it has been shewn, “is a state *free*, when it is governed by its own “will.” It does not appear how this was *shewn*, or whence *inferred*; but Civil Liberty was *defined*, the power of a State to govern itself by its own discretion.

SECTION

SECTION IV.

The Principles of Civil Government.

§ 82. It will probably be allowed as a first principle, that, if a number of men assemble together, agree to form a Civil Community, and entrust the power of making laws for the community in the hands of any particular persons, the laws made by such persons will bind every member of that community. But if any one man of the whole number be unwilling to come into the terms of association, he surely has his liberty, he is not bound by the determinations of the rest.

§ 83. So, if a man come afterwards and mix with the members first associated, the laws bind not him, unless he does some way or other, expressly or tacitly, give his consent to the original creation of the legislative power. We need not stop to consider, whether the mere living in the Society amounts to a tacit consent. Be that as it may: it is enough for the present purpose if he is not bound, unless he does by some means or other give his consent.

§ 84. If so, whence comes the claim of a *Majority* to govern the whole? Mr. Locke says†, from

† On Government. 2. § 98.—He makes a distinction between the consent required for constituting a civil Community, and that which is required afterwards for making Law.
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from this, that the consent of every individual "is next to impossible ever to be had." I do not dispute his conclusion;---but I would particularly point to the Ground of his reasoning. He argues from the great Difficulty of procuring the consent of every Individual, or the great Mischiefs that must arise if such consent were to be insisted on. It is then upon the principle of *Utility* that he builds his reasoning:---the foundation of all laws Civil and (perhaps) Moral.

§ 85. We will go on to argue upon the same principle. In societies so numerous as civil societies usually are, it is utterly impracticable to procure the consent even of the Majority:---the Difficulty is in effect as great in this case as in the other. In *effect*, I say; for where two things are both (commonly speaking) impracticable, it is needless to estimate their difference in point of difficulty. Every one will suggest to himself numerous

The consent of *every* individual is, according to him, necessary to the former; that of a *majority* only, to the latter (2. § 95.) There does not appear sufficient reason for the distinction. It is not at all probable, that men should meet first to form a body politic, and afterwards consider of some Laws to be enacted for the direction of their conduct. It is more likely (if any Compact at all is to be supposed), that they might at first agree upon some common rules of behaviour, which we may call Laws, and *by* thus agreeing, form a Community: or, adding one rule to another, might *gradually* become so connected, as to be easily viewed in the light of a System, and to receive, with some propriety, the denomination of a Body Politic.

merous obstructions which may create this Difficulty of obtaining the consent of a Majority :--- I will content myself with marking out a single one. Suppose a number of men assembled for the purpose of constituting a community and vesting a legislative power in some particular members. It is highly probable that there will be a contest, not simply between *two* plans of government ; but among a dozen, a hundred, or a thousand, suggested by the various fancies of different men. It is also highly probable that, of all these plans, no *one* will be approved by a majority of the whole number assembled. Will you say, that the greatest number agreeing in any one plan, is to be called a Majority ? Whatever it is to be called, it is certainly a very different thing from a Majority *of the whole*. But you will still say perhaps, that *this* Majority should be allowed to determine for the whole. If we should urge you for your Reasons, I fancy you must recur to the principle of Utility. You might use Mr. Locke's expression, and say that it is " next to impossible " to come nearer to the consent of every Individual than taking the consent of *such* a Majority†.

§ 86.

† To shew that a Majority, even of the whole, does not necessarily bind the whole, suppose that every Individual in England gives his consent to the establishment of a Civil Community, comprehending the English and the Dutch. And suppose that, after the Community is thus far established, the English (who are a Majority of the whole) proceed unanimously

§ 86. We *must* then argue on the ground of Utility. Men must submit to the Difficulty and Necessity of human affairs, and content themselves with studying to avoid the greatest Mischief. It is not this or that Form of government which can be the *only* right one: it is not this or that manner of creating a legislative authority which can be *only* admissible. The forms of government which, *in fact*, have taken place and will take place, arise necessarily from particular conjunctures, from combinations of circumstances infinitely varied, from *accident*, if any one prefers the expression. If none are to be allowed as just and equitable, besides the very best conceivable one, then I fancy no one equitable form of government has ever been or is likely ever to be.--- The peaceable Patriot will indeed seize with eagerness every favorable opportunity of improving the constitution of his country, and of bringing it as near as possible to a resemblance with the model framed in his own mind: but, in the ordinary course of his actions, he will submit to the regulations already established by the laws; and he will submit from Principle as well as from Fear of Punishment.

§ 87. Something may be said in this place on the method of making laws by *Representatives* of

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mously to enact laws. Will these laws bind the Dutch? Or, are the Dutch of course incorporated with the English in one Civil Society? It certainly must be so, if the will of a Majority did necessarily bind the whole,

the people. That such a method is a desirable one, useful, fitted to promote the great and valuable blessings of Civil Liberty, I am far from denying. But, that laws thus established may be looked upon as made by the common Consent of the people, seems hard to be allowed. The difficulty, already considered, of conceiving the voice of a Majority as of the same effect with the voice of the whole, occurs here, both in the election of a Representative in each district of the Community, and also in the enacting of laws by the Representatives. But moreover, the Representative of a district may frequently happen to be elected by a number much less than the half of those whom he represents. If, for instance, there are three candidates, any number exceeding a third of the whole may possibly determine the election. So that the body of representatives may be elected by a number much less than half of the community.

§ 88. We may observe also, that, unless the numbers in the different districts are *equal*, it may easily happen that a majority of the Representatives shall not represent a majority of the Community; even though *every* citizen has a voice in electing Representatives.---But it is unnecessary to be more particular on this head. We must submit to the inconveniences which attend the best method, till some still better shall be devised.

§ 89. I only wish to make it appear that, whatever Advantages this method of legislation may bring

bring along with it, still it is very different from making laws really by the unanimous consent of the people. And it is merely on the ground of *Inconvenience, Mischief, and Difficulty*, that any method of making laws can be justified, except that in which *every* Individual gives his consent. The Conclusion is; all forms of government which can be reduced to practice being necessarily imperfect, no one of them ought to be extolled by speculative politicians, in such a manner as if no other could be fair, just, admissible.

§ 90. The subject I am now got upon, the Principles of Government, might lead me on to write volumes. I rather chuse to keep to my first intention; which was, to write a few miscellaneous Observations.

§ 91. I will only add a word or two concerning the *Omnipotence* of a Legislature. That the Legislature is not omnipotent, as opposed to the whole People, is clear enough. For the whole People must include the members of the Legislature: and it would be absurd to say, that the voice of the Legislature alone should prevail over that which is the voice of the Legislature and the rest of the people taken together. But this voice of the whole people cannot be had: it is, as to practice, an absolute chimæra. And when once you allow that we may dispense with the actual unanimous consent of all Individuals, *because* we are under a *necessity* of dispensing with it; you must go

on where the *necessity* of human affairs leads you; and that is, if I mistake not, to this point, that those to whom the ordinary powers of legislation in any state are committed, must be considered as unconfined in the power of making laws.

§ 92. "What? Were the British Parliament
 "to enact a law, that no one (except themselves
 "and a few specially reserved to execute the law)
 "should be allowed, on pain of death, to taste
 "any food for a month to come; and that the
 "being alive at the end of a week should be evi-
 "dence of the crime? Would every Englishman
 "be bound to submit to such a law?"---Extreme
 cases, like this, always bring along with them all
 the remedy they are capable of. It is to no pur-
 pose to lay down rules about them beforehand:
 for when they happen, all rules and laws cease;
 violence alone has place. In vain would a man,
 in any particular circumstances, say at the time,
 "this is an extreme case," and attempt to justify
 himself, by *argument*, in acting as if it really was
 so. It is trifling to argue about such cases, not
 merely because those who are involved in them
 will always act from feelings which preclude the
 effect of all arguments; but because the cases
 cannot be reduced to any distinct general ideas,
 so as to become a proper subject for argumenta-
 tion. Therefore, in all Speculations, we may
 still consider the Legislature as unbounded in its
 powers.

SECTION V.

General Idea of the Perfection of Civil Liberty.

§ 93. That some Civil Society is necessary to peace and good order, that many of the Restraints imposed by civil laws are of use, is easily understood. It may be added, that those restraints which do no good will probably do harm. Many of them, we know, are immediately hurtful, taken singly; but there is also something pernicious to be observed in the effect common to all restraints.

§ 94. One mischief attending them, is that they must by their nature operate in the way of general rules. Special laws cannot be made to direct the actions of each Individual; much less can the attention of the legislature be called out to every action of each. And it is found by experience, that at least such general rules as *human* foresight is able to invent, however useful in the main, are yet in many particular cases prejudicial. In the opinion of some perhaps, we might go farther, and say that general rules, by their very essence, must sometimes do harm, though formed in absolute perfection. And, according to this idea, it has been conceived that the Deity acts by no general rules; but, foreseeing every combination of circumstances precisely as they will exist, provides

provides specially for each by his unerring wisdom. In this light, we see it to be a mark of man's imperfection, that he is obliged to have recourse to general rules†.

§ 95. The mischief of restraints will be further seen by recollecting how nice a matter it is, to bring the mind of man into such a frame that it shall exert its faculties with the greatest energy. When it acts by *rule*, how dull and ineffective ! When it goes out in pursuit of its own inclinations, how lively and forcible ! There is,—even “ in
“ a state disturbed by licentiousness, there is an
“ animation which is favourable to the human
“ mind, and which puts it upon exerting its
“ powers”‡. The fear of punishment turns a man's attention upon himself and his own interests. If the restraints are very numerous, he is employed in watching himself in his intercourse with his fellow-citizens, that he may not be caught offending. This habit of caution and minute attention to his own conduct, damps or extinguishes those generous sentiments which might lead him out to promote the happiness of others, and prompt him to catch with eagerness every opportunity of advancing the public welfare. It is therefore by no means the
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† Let me not be understood as speaking against the Use of general rules. They are undoubtedly of the highest importance, in the present condition of human affairs : but they are nevertheless evidently subject to the imperfection here mentioned.

‡ Dr. Price on Civil Liberty, p. 14.

part of a good and wise legislature, to impose restraints where they are not necessary to the production of some Good which may counterbalance the Evil of restraining.

§ 96. But where they *are* the necessary means to such an end, the best part that human wisdom and human benevolence can act, is to impose them. And, when imposed, they may possibly increase the Liberty of the peaceable citizen. Not indeed his *Civil Liberty*, understood as the *Absence of Civil Restraints*; for that must certainly be diminished by every additional civil restraint. But a law may, by tying up the hands of the violent and unprincipled, contribute more to the liberty of the peaceable citizen than it takes away from his liberty by the new restraint which it does itself impose. So that, upon the whole, he becomes freer to follow his own will, and is less controuled in his actions than he was before†.

§ 97.

† If a law commands me to keep to my right hand in walking along the streets, it abridges my liberty. But if, by enjoining the same to every other passenger, it removes many obstructions that would retard me, I am upon the whole more at liberty in walking along than I should have been without the law.—We may see also in this trifling instance the Evil of laying a restraint where it is not wanting: if the number of passengers is so small as to cause no confusion, it would be a hardship upon people, to be under the necessity of observing such a regulation. Nay, we may go still farther with the same instance:—it shews the Imperfection of a general rule. When the streets are thin, the reason of the law ceases, and the advantage of it: the inconvenience remains, without any Good to counterbalance it.

§ 97. Not that we must expect this *always* to be the effect of a law, even in theory: there are other good purposes to be answered in legislation: ---national strength, commerce, the health of the people, must be attended to. But it is plain that an increase of liberty upon the whole, *may* be owing to an immediate diminution of it by the laws of the community.

§ 98. We seem then to be arrived at one useful principle by which a legislature may guide itself in the formation of laws: To avoid, as much as possible, multiplying restraints upon the Subject. This principle leads to the point of Perfection in Civil Liberty. It is the nature of Society, that each member of it can only be allowed to pursue his own happiness in a manner consistent with that of the other members; or we may say, that he ought to procure his private Good through the Medium (as it were) of the public Good. Wherever that does not require him to be curbed, our Principle would leave him as free as he himself can wish or conceive. If he is ambitious of being more free than the public Good will allow, he forgets surely that he is a member of Civil Society.

§ 99. Could I proceed to direct the labours of Legislators in the *Application* of the Principle just mentioned, it were an employment of the highest service to mankind.---But with trembling diffidence I withdraw my hand from the attempt.
I can-

I cannot be persuaded that "in great attempts
 "'tis glorious ev'n to fall."

§ 100. As the Principle stands, it is mere Speculation, and even of the most abstracted sort: The Difficulties attending the application of this and other political principles to actual legislation, in whatever manner they affect a Legislator, may however teach a Subject to judge his Rulers with Candour. Let him put himself for a moment in the place of a legislator, and conceive as distinctly as possible the difficulties that would embarrass him, if he were acting with the greatest fidelity in that character: and let him, while he remains in this ideal situation, image to himself some half-informed politician catching with a malignant pleasure at every error he might be guilty of, and at every Appearance of error.--- The application of this seems not difficult.

§ 101. But, why should any civil restraints at all be imposed? For two reasons: the Ignorance of men, and their moral Depravity. Did every man perfectly understand his own interests and those of the persons with whom he lived in society; and were his Passions and his Faculties always under such regulation that he could exert himself with energy wherever his knowledge directed him: we should be in a condition superior to the necessity of civil restraints. We should neither want chains to tie us up from being mis-

chievous, nor a Guide to keep us from missing our road.

§ 102. It may perhaps be urged, that if men were such as here described, they would never associate in communities, and that civil society would be useless. I think it might be shewn at large, both that civil society would still have its use, and that men would probably enter into it: nay, that political bodies would be formed much more firm and compact than at present. Perhaps the favourite theory of a Common Consent might then be reduced to practice.---But I desist. These are the regions of Fancy: or if real, they are at a great distance, and mankind is advancing but slowly towards them. Poets may describe them, as the scene of a second Golden Age: their descriptions may present agreeable pictures to the imagination, and even warm the heart with virtuous and useful sentiments. I shall content myself with observing, that the Liberty which opens to our view in this prospect, is as much superior to that Perfection of civil liberty which the present Ignorance and Perverseness of men will (under the best legislation) admit, as this is to the civil liberty enjoyed in states oppressed by tyranny, or disturbed by licentiousness.

P A R T III.

Of the Authority of one Country over another.

§ 103. **W**E must be obliged, however reluctantly, to give up the pleasing idea of a Government founded on the actual unanimous Consent of Individuals; as utterly incapable of being reduced to Practice. Besides the difficulties arising from the Numbers of Individuals, men are far too ignorant, they are much too self-interested, too depraved in their moral principles, to admit of such a constitution of civil society. The Alternative then is, men must live unconnected by civil ties, or else some of them must be made to submit to laws to which they have neither immediately nor mediately given their express consent;---neither by voting for the law itself, nor for the establishment of the legislature which enacts it.

§ 104. If any one prefers the first part of the alternative, I have only to say that I am not at present addressing myself to him, but to those

who think that a civil society, such as can in fact be had, is both desirable and justifiable.

§ 105. Now, after it is allowed that some men may and must be *compelled* to submit; it seems, that, to fix precisely upon a Majority in point of number, as what is required, and may be allowed, to determine in all cases for the whole, is to fix in an arbitrary manner, without sufficient warrant from reason.

§ 106. Mr. Locke, who supposes the consent of every Individual necessary to the Formation of a Community, is of opinion that, after the Community is formed, and so made *one Body*, the Majority have a right to act and conclude the rest†. And he gives this *general* proof of it, ‡“For that which acts any community, being
“only the consent of the individuals of it, and
“it being necessary to that which is one body
“to move one way; it is necessary the body
“should move that way whither the greater force
“carries it, which is the *consent of the majority*;
“or else it is impossible it should act or continue
“one body, *one community*, which the consent of
“every individual that united into it, agreed
“that it should; and so every one is bound by
“that consent to be concluded by the *majority*.”

§ 107. This is delivered as a *Proof*: but it seems to be only an *Illustration*;---a Simile taken from the doctrines of matter and motion. It is indeed

† On Government. 2. § 95.

‡ Ibid. 2. § 96.

indeed necessary to that which is really one body, as a piece of wood or iron, to move one way; insomuch that if a part of it should fly off and move a different way, that part and the remainder would then be called two separate bodies. But what does this *prove* with regard to a body politic? Again, it is indeed true, that, if a body is impelled by two contrary forces, it will move the way that the greater force impels it. And we may *compare* a Community to a Body, its Action to Motion, the Wills of a Majority and a Minority to two opposite Forces. But, to draw a *Conclusion*, that the Community must act according to the will of the Majority, would be venturing too far.

§ 108. Dr. Price* appears to have taken the point for granted; that the will of a Majority is binding upon the whole Community. I have already made such observations on this head as occurred to me, and beg leave to refer to them†.

§ 109. We wait then till some satisfactory reason be assigned, why the Whole should always, and from the nature of the thing, be bound to follow the determination of the Majority. In the mean time, it seems to be true, that as in every case *some* men must be forced into subjection, so in most cases the Majority must be forced into subjection by a Minority; that it *must* be so, from the present necessities of mankind, and will be so while men continue such as they now are in respect of their
various

* P. 5.

† § 84, &c.

various abilities, their knowledge, moral qualities, and opportunities of action; that it is also for the benefit of mankind, both governors and governed, as it could otherwise rarely happen that civil societies would be formed at all; and therefore, lastly, that there are circumstances in which it is *right* and *justifiable* for a smaller number to hold a larger in subjection.

§ 110. To determine in *particular* circumstances whether this can be justified, may happen to be a matter of nicety. And great differences of opinion may arise about it. It may be clear that the Parliament of Great Britain has authority over the inhabitants of England, though these far exceed their governors in number: it may be also clear that the same Parliament has *no* authority over the inhabitants of France: it may nevertheless be disputed by some, whether that Parliament has authority over the inhabitants of Massachusetts Bay.

§ 111. We cannot then conclude a government to be unjust merely because the Governors are *fewer* than the Governed. Let us consider what effect may arise from their living in *different countries*.

§ 112. A Country sometimes has the same meaning as a Territory; sometimes it is used to signify the Inhabitants of a territory, making a civil community. And in this latter sense it is used promiscuously with the words, Community, State,

State, Nation, Civil Society. A distinction has already† been made between an independent community and a subordinate one. And we ought to be aware that a State, a Country, a Nation, is sometimes spoken of as an independent community; sometimes as a subordinate community; and sometimes is mentioned without any reference at all to the idea of Independence or of Subjection, being taken indifferently for any community whether independent or subordinate.

§ 113. This ambiguity makes it necessary to use a degree of caution, that we do not fall into some such erroneous reasoning as the following. We compare two countries together in our minds, as for instance France and England: we do not hesitate to pronounce that the legislature of either state has no right to impose laws on the members of the other. We may next perhaps, if we are not careful, form some such general proposition as this, Different Countries have no right to interfere with one another in points of legislation. It is certainly true, it is even an identical proposition, if by a Country we mean an independent community. But it would be by no means unlike the common frailty of the human mind, if we should now forget that we had at first confined the word Country to the idea of an independent community, and should admit the truth of the Proposition at large, the word being understood

stood in any of its usual significations. Hence then we advance fast in error: we come presently to conclude, that different Communities must needs be free from each other in matters of legislation, that the inhabitants of separate Territories must form distinct Communities, and so, lastly, that it is unjust for the inhabitants of one territory to claim any right of imposing laws on the inhabitants of another.

§ 114. He that has been used to attend to fallacies in reasoning, will, I presume, allow such a chain of deduction not unlikely to be formed. And yet we see, that the main point of difficulty is left entirely untouched; namely, in *what* circumstances a country may justly assert the rights of an independent community, and in *what* circumstances it ought to submit as subordinate.

§ 115. To attempt a delineation of the distinguishing circumstances, would carry me far beyond the intent of these cursory observations. But it is something to have got thus far:---it is at least a lesson of modesty. We see how we may go wrong if we are not cautious: we see (what some people appear scarcely to suspect) that there is real difficulty in these speculations. We have also a general view of that in which the difficulty before us consists; which may be of some small use, as a guide to those who would pursue the subject farther.

§ 116. The

§ 116. There are however two points on which I will venture a few additional remarks. One is, the supposition of different communities incorporated together, by a just and adequate Representation of the Individuals in each community. And here it should first be recollected, how widely the mode of making laws by Representatives differs from that in which the unanimous consent of *all* ties every civil knot. Indeed, could this unanimous consent be obtained in the single instance of appointing a legislature to make all future laws, this might perhaps remove every difficulty; (except that arising from the constant Change of Individuals in the same community, which we need not now consider.) If such an original consent should appoint Representatives, these would have authority, according to the strictest notions. Yet would not any other kind of Legislature, appointed by such original consent, have just as good authority as that which is composed of Representatives? Certainly.

§ 117. But, if there were no such original appointment of Representatives, some perhaps might still affirm, that the voice of a body representing the people may, by some natural Equity or the Reason of the thing, be considered as the voice of the people. This however cannot be admitted. Let the elections of the Representatives be as nearly unanimous as you please, yet whenever you allow of any thing short of perfect una-

nimity, the allowance can be justified upon no other ground but the *Necessity* of it. Here we recur to the principle so often insisted on :---as the general circumstances of mankind oblige you to recede somewhat from requiring the strict consent of *all*, so the particular circumstances of different cases will oblige you to recede more or less from that consent, and will of course justify various forms of government.

§ 118. It seems to me then erroneous to conclude *universally*, that, because the inhabitants of one territory do not send Representatives to mix with those elected by the inhabitants of another, *therefore* they are not bound by a Legislature residing in that territory whose inhabitants do elect Representatives.

§ 119. The other point on which I would add a few remarks, is the plan of an *Empire* formed by a Combination of distinct Communities†. It has been thought practicable as well as desirable, that an Empire should be constituted, consisting of different states, each independent of the rest as to internal legislation, but subject to a Senate appointed by the common consent of the states. This Senate, it is said, might possess the power of managing the *common* concerns of the united states, and of judging and deciding between them, as a common Arbiter or Umpire, in all disputes; having, at the same time, under its direction, the

* See Dr. Price's Observations, p. 8, 9, and p. 27, &c.

the common force of the states to support its decisions.

§ 120. Such a Senate as this must be allowed to have authority to punish a refractory state, in order to reduce it to obedience. If an accusation is brought before the Senate, by one state against another; complaining of some injury, and a decision is made and reparation decreed; if afterwards the party offending refuses to make the appointed reparation, the Senate has no other resource for making up the loss to the party injured, but that of punishing the offending party, till it complies with the terms of the decree. We are now therefore to suppose that the Senate sends an armed force against the offending state and executes the punishment. We may ask whether it is not probable, from the experience furnished by history, that the event of this war will be a total reduction of the state, and the subjection of it either to the Senate, or to the other states separately in portions.

§ 121. For, what shall prevent the Senate from executing such a punishment? Not the single Force of the state itself; for the Senate has a much greater force, the common force of the states, under its direction. Shall the principle of Self-interest prevent the members of the Senate from voting such a punishment? A large majority of votes will probably be biased the contrary way, if at all, by the interest both of each member
per-

personally, and of the state to which he belongs. Shall the principles of Virtue and Honor forbid it? Alas! History rather teaches us to expect, that the few votes which might be given upon these principles in mitigation of the punishment, even with the addition of the other few from self-interest, would fall far short of a majority.

§ 122. After the reduction of one state, others would be reduced in like manner: and in time, after some conflict among a few of the longest lived, the Empire would end in a small number of large Communities totally separated from each other; or perhaps in a single one. So much may be said against the Practicability of the plan.

§ 123. But let us look again into the Theory of it. Let us make a more favorable supposition, and conceive a Senate composed wholly of virtuous and intelligent Senators. They are to manage the *common* concerns of the Empire. What are the *common* concerns?----What is there in the nature of a law or regulation in any one of the states, that is *not* a common concern of them all? Whence can the welfare of the Empire arise, but from the welfare of the several states? And by what means is the welfare of each to be protected and advanced more than by its internal legislation? Surely no law in any one state could be so little of a common concern to the rest, as not to require at least that it should be enacted under the *permission* of the Senate. The bye-laws of any one of the
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Corporations in England, have perhaps but little effect upon the interests of the rest, or of the nation in general: yet we can scarce think the internal regulations even of the most detached and insignificant Corporation in the kingdom so little interesting to the people at large, as to wish that its bye-laws might be made without the possibility of a controul from the Legislature of the nation.

§ 124. This instance seems fairly applicable to the case before us. For, the effects which the internal legislation of each state will produce, in respect of national strength, riches, and commerce, will probably be of more material common concern to the other states, than the effects produced by the bye-laws of some trifling Corporation in England are to the whole kingdom.---Now, if the laws of each state are to be enacted under the Permission of the Senate, the idea of an *Empire* is at an end; there is only one *Community*. And thus the plan of *such* an Empire appears even in Theory inconsistent with itself.

§ 125. Once more. View this matter in another light. Grant that there are many points of internal legislation in each state, which are not of common concern to the other states. Who is to determine in particular cases, what is and what is not of common concern? It must be, that doubtful cases will very often occur. And where shall the power of determination be lodged so properly as in the Senate? No where. But
this

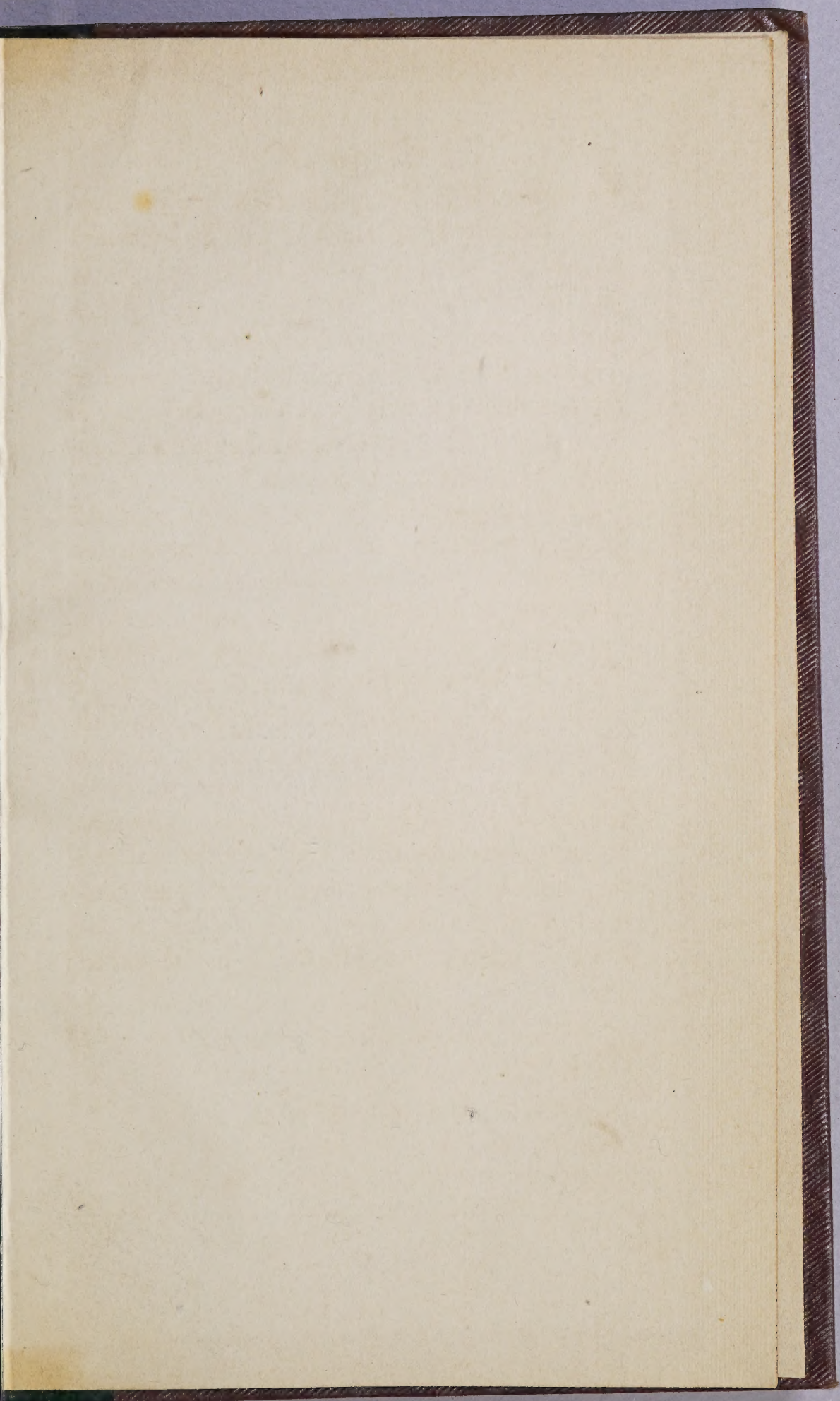
this power, if it does not already imply a sovereign authority in all matters, does at least lead to it in the common course of human affairs; and the *Empire*, if not immediately, will gradually become, in effect, a single *community*.

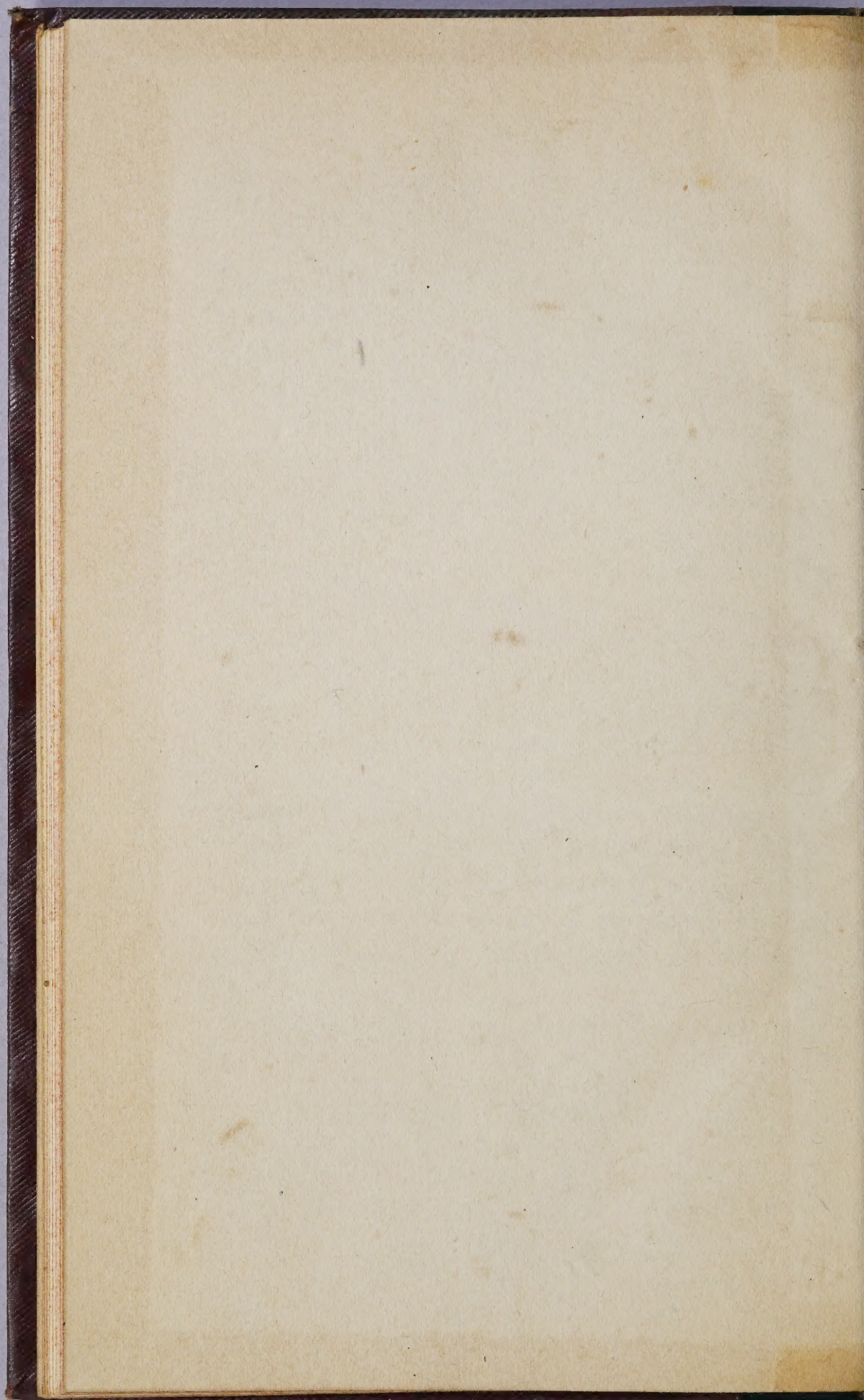
§ 126. Such are the conclusions that we arrive at, in considering the plan of an Empire which is to be conceived, if possible, as composed of distinct independent Communities.

§ 127. But let us, as well as we are able, avoid being deceived by the Sound of words: let us not conclude that every political constitution which may be called by the same name, must in consequence be liable to the same objections. There is a scheme of Empire, which appears both consistent with itself and practicable. In this scheme, the idea of an Empire is only that of a large independent Community composed of a number of subordinate Communities. The subordinate ones have their several legislatures, and the imperial legislature superintends and controuls them all.---But I will not attempt to describe the scheme: for Mr. Burke has described it†.

* Speech of Apr. 19. 1774. 3d Edit. p. 92, 93. In 1st Edit. p. 54. 55.

T H E E N D.





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